

AGREEMENT FOR CONSERVATION EASEMENT

(This instrument is exempt from County and taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively)

This CONSERVATION EASEMENT is created _____, 2007, by and between William E. Montgomery and Karen K. Montgomery, husband and wife, whose address is 281 13 Mile Road, Sault Ste. Marie, Michigan, 49783 (Grantors) and,

the Michigan Department of Environmental Quality (MDEQ), whose address is, Constitution Hall, 1st Floor South, P.O. Box 30458, Lansing, Michigan 48909-7958; or 525 West Allegan Street, Lansing, Michigan 48933(Grantee);

The Grantors are co-owners (50% interest) of real property held as a tenancy in common and located in the Township of Bruce, Chippewa County, and State of Michigan, legally described in Exhibit A.

MDEQ is the agency charged with administering Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and Permittee CCMS Associates Inc. has been issued a Permit (MDEQ Number 97-04-0138-P) pursuant to part 303 to authorize activities that will impact regulated wetland. The MDEQ evaluated the permit application and determined that a permit could be authorized for certain activities within regulated wetlands provided certain conditions are met, and

Grantors have agreed to grant the MDEQ a Conservation Easement that protects the wetland mitigation site and /or the remaining wetlands on the property and restricts further development to the area legally described in Exhibit B. The Conservation Easement (the Easement Premises) consists of approximately 24.25 acres. The MDEQ shall record this Agreement with the county register of deeds.

The United States has executed a Consent Decree with Grantor William Montgomery to settle a civil action, United States of America v. William Montgomery, et al., Docket No. 2:05-CV131 which has been filed in the United States District Court for the Western District of Michigan, Northern Division. In that civil action, the United States has alleged that, inter alia, Permittee and Grantor Montgomery violated an administrative Consent Agreement and Final Order, Docket Nos. CWA-5-2003-0005 and CWA-5-2003-0006, entered into on September 17, 2003 that required Permittee and Grantor Montgomery to construct 18.51 acres of mitigation wetlands in accordance with MDEQ Permit No. 97-04-0138-P, dated October 22, 2001.

The court entered a default judgment against CCMS Associates, Inc., on May 24, 2006. The judgment included an injunction ordering CCMS Associates, Inc., to complete the 18.51 acres of wetland mitigation that CCMS had agreed to perform under the MDEQ Permit, and later under the Consent Agreement and Final Order with U.S. EPA.

The Grantors and the Grantee intend that this Conservation Easement shall be enforceable by the United States Environmental Protection Agency, and its successors and assigns as Third Party Beneficiary.

ACCORDINGLY, in consideration of the terms of the Consent Decree, Grantors convey this Conservation Easement to Grantee pursuant to Subpart 11 of Part 21, Conservation and Historic Preservation Easement, of the NREPA, MCL 324.2140 et seq., on the terms and conditions stated below.

1. The purpose of this Agreement is to protect the functions and values of existing or established wetlands and its natural resource

values on the Easement Premises consistent with the Permit and the protection of the benefits to the public derived from wetlands and integral habitat, by requiring Grantors to maintain the Easement Premises in its natural and undeveloped condition. In order to carry out the purpose of this Agreement, Grantors, for themselves and on behalf of their successors, transferees and assigns, and Grantee, for itself and on behalf of its successors, transferees and assigns hereby agree that the United States Environmental Protection Agency shall have the right to enforce the terms of this instrument as Third Party Beneficiary.

2. Except as authorized under MDEQ Permit Number 97-04-0138-P issued on October 22, 2001 or as otherwise provided in this Agreement, Grantors shall refrain from, and prevent any other person from altering or developing the Easement Premises in any way. This includes, but is not limited to:

- a) Alteration of the topography
- b) Creation of paths, trails, or roads;
- c) The placement of fill material as defined in Part 303 of the NREPA, MCL 324.30301 et seq., as amended.
- d) Dredging, removal, or excavation of any soil or minerals;
- e) Drainage of surface or ground water;
- f) Construction or placement of any structure;
- g) Plowing, tilling, or cultivating the soils or vegetation;
- h) Alteration or removal of vegetation, including the planting of non-native species;
- i) Ranching, farming, horticulture, silviculture, and lumbering;
- j) Construction of unauthorized utility or petroleum lines;
- k) Storage or disposal of garbage, trash, debris, abandoned equipment or accumulation of machinery, or other waste materials; including accumulated vegetative debris such as grass clippings, leaves, yard waste, or other material collected and deposited from areas outside the Easement Premises;
- l) Use or storage of off-road vehicles including, but not limited to snowmobiles, dune buggies, allterrain vehicles, and motorcycles;
- m) Placement of billboards or signage, except as otherwise allowed in the Permit or this Agreement;
- n) Use of the wetland for the dumping of untreated stormwater at a volume that adversely impacts the hydrology of the wetland;
- o) Alteration of stone dam outlet control structures other than as necessary to maintain its intended function.

3. Cutting down, destroying, or otherwise altering or removing trees, tree limbs, shrubs, or other vegetation, whether living or dead, is prohibited within the Easement Premises, except with the written permission of Grantee, expressly for the removal of trees or limbs to eliminate danger to health and safety; to reduce a threat of infestation posed by diseased vegetation; or to control invasive non-native plant species that endanger the health of native species.

4. Grantors are not required to restore the Easement Premises due to alterations resulting from causes beyond the owner's control, including, but not limited to, unauthorized actions by third parties that were not reasonably foreseeable; or natural disasters such as unintentional fires, floods, storms, or natural earth movement.

5. Grantors may perform activities within the Easement Premises consistent with the Permit or the mitigation requirements. Grantors shall provide 5 days notice of undertaking any mitigation activity even if the mitigation project has been conceptually approved. Any activities undertaken pursuant to the Permit, a mitigation project, or this Agreement, shall be performed in a manner to minimize the adverse impacts to existing wetland or mitigation areas.

6. Grantors warrant that they hold a one-half interest as tenants in common in the property described in Exhibit B. Grantors have disclosed the status of title by Commitment for Title Insurance.

7. Grantors warrant that any other existing interests or encumbrances in the Easement Premises have been disclosed to the MDEQ.

8. The Grantors warrant that to the best of Grantors' knowledge no hazardous substances or hazardous or toxic wastes have been generated, treated stored, used, disposed of, or deposited in or on the property.

9. This Agreement does not grant or convey to Grantee or members of the general public any right to possession or use of the Easement Premises.

10. Grantors shall continue to have all rights and responsibilities as owner of the property subject to this Agreement. Grantors shall continue to be responsible for the upkeep and maintenance of the Easement Premises, to the extent it may be required by law.

11. Grantee and its authorized employees and agents may enter the Easement Premises upon reasonable notice to Grantors to determine whether the Easement Premises are being maintained in compliance with the terms of this Agreement, mitigation or other conditions of the Permit; and for the purpose of taking corrective actions for failure to comply. If Grantee is entering the easement premises for the purposes of taking corrective actions, Grantors shall be provided with 14 days notice to provide the opportunity to cure the failure to comply.

12. This Agreement shall be binding upon the successors and assigns of the parties and shall run with the land in perpetuity unless modified or terminated by written agreement of the parties after the U.S. EPA has given it written approval. The Grantee will file with the appropriate register of deeds any such U.S. EPA-approved modification or termination of this instrument.

13. This Agreement may be modified only in writing through amendment of the Agreement. Any modification shall be consistent with the purpose and intent of the Agreement.

14. This Agreement may be enforced by either an action at law or in equity and shall be enforceable against any person claiming an interest in the Easement Premises despite a lack of privity of estate or contract.

15. Grantors shall indicate the existence of this Agreement on all future deeds, mortgages, land contracts, plats, and any other legal instrument used to convey an interest in the Easement Premises.

16. A delay in enforcement shall not be construed as a waiver of the Grantee's or Third Party Beneficiary's right to enforce the conditions of this Agreement.

17. This Agreement shall be liberally construed in favor of maintaining the purpose of the Conservation Easement.

18. If any portion of this Agreement is determined to be invalid by a court of law, the remaining provisions will remain in force.

19. This Agreement will be construed in accordance with Michigan law.

20. In addition to the terms of the Permit issued by Grantee, this document sets forth the entire agreement of the parties. It is intended to supercede all prior discussions or understandings.

21. Within 90 days after this Agreement is executed, Grantors shall place and maintain at Grantors' expense, signs, fences, or other suitable marking along the Easement Premises to clearly demarcate the boundary of the Easement Premises.

LIST OF ATTACHED EXHIBITS

Exhibit A: A legal description of the Grantors' property, inclusive of the Easement Premises.

Exhibit B: A legal description of the Easement Premises.

Exhibit C: A survey map depicting the Easement Premises that also includes identifiable landmarks such as nearby roads to clearly identify the easement site.

Exhibit D: A legal description that provides a path of legal access to the Easement Premises and a map that indicated this access site that MDEQ staff will use for ingress and egress to and from the Easement Premises; or if the Easement is directly connected to a publicly accessible point, such as a public road, a statement is required that authorizes MDEQ ingress and egress to and from the Easement Premises with a map that clearly indicates the connection of the public access site to the Easement Premises.

IN WITNESS WHEREOF, the parties have executed this Agreement of the date first above written.

GRANTORS:

Signature: _____

William E. Montgomery
Type/Print Grantor's Name

GRANTOR:

Signature: _____

Karen K. Montgomery
Type/Print Grantor's Name

STATE OF MICHIGAN}
 }ss
COUNTY OF }

(OR) IF SIGNING AS AN INDIVIDUAL OR MARRIED PERSON, THIS MUST BE COMPLETED:

The foregoing instrument was acknowledged before me this day of _____, 2005

by, _____ (name[s]) _____ (marital status).

(Signature of Notary Public)

(Typed or Printed name of Notary Public)

Acting In: _____ County, Michigan

My Commission Expires: _____

GRANTEE:
STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND AND WATER MANAGEMENT DIVISION

Mary Ellen Cromwell, Chief

STATE OF MICHIGAN}
 } ss
COUNTY OF INGHAM}

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Mary Ellen Cromwell, Chief, Land and Water Management Division, State of Michigan, on behalf of the Michigan Department of Environmental Quality.

(Signature of Notary Public)

(Typed or Printed name of Notary Public)

Acting in: Ingham County, Michigan
My Commission Expires: _____

Drafted by:

Sherry L. Estes,
Associate Regional Counsel,
U.S. EPA; 77 W. Jackson
Chicago, Illinois 60604 based on a model created by

The Honorable Mike Cox, Attorney General
Department of Attorney General
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, Michigan 48909

AFTER RECORDING, RETURN TO:

**Michigan Department of Environmental Quality
Land and Water Management Division
Constitution Hall, 1st Floor South
P.O. Box 30458
Lansing, Michigan 48909-7958**

EXHIBIT A

TO THE

CONSERVATION EASEMENT

The North Half of the West Half of the SW 1/4 of Section 8, T46N, R1E,
Bruce Township; Chippewa County; Michigan

EXHIBIT B

TO THE

CONSERVATION EASEMENT

The North 800 Feet of the West Half of the SW 1/4 of Section 8, T46N, R1E,
Bruce Township; Chippewa County; Michigan, containing 24.25 acres more or less.

EXHIBIT C

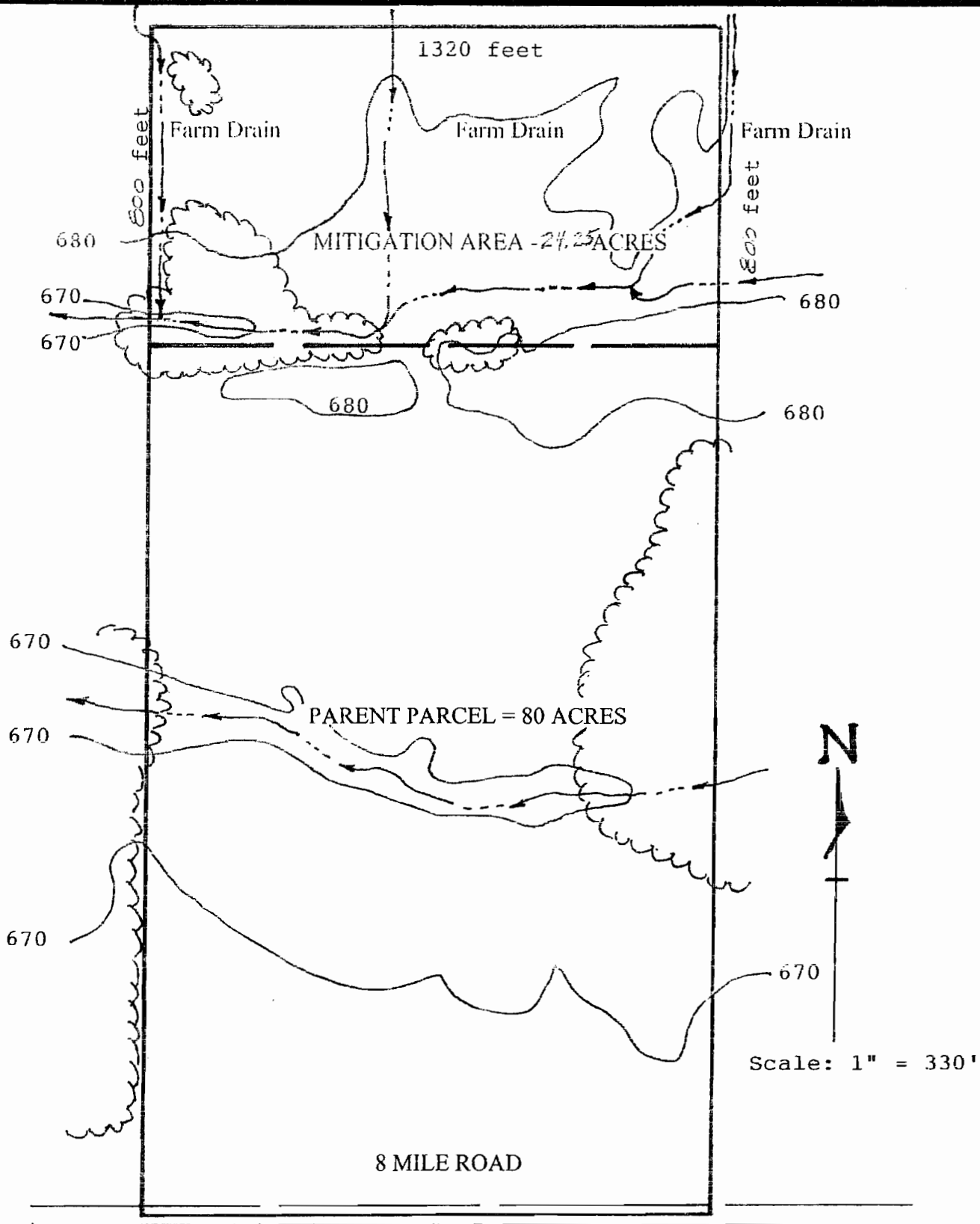
TO THE

CONSERVATION EASEMENT

A MAP OF THE EASEMENT PREMISES

See attached map labeled:

“Marquette Ave. Wetland Mitigation
Existing Site at 8Mile Road, Bruce Twp.”



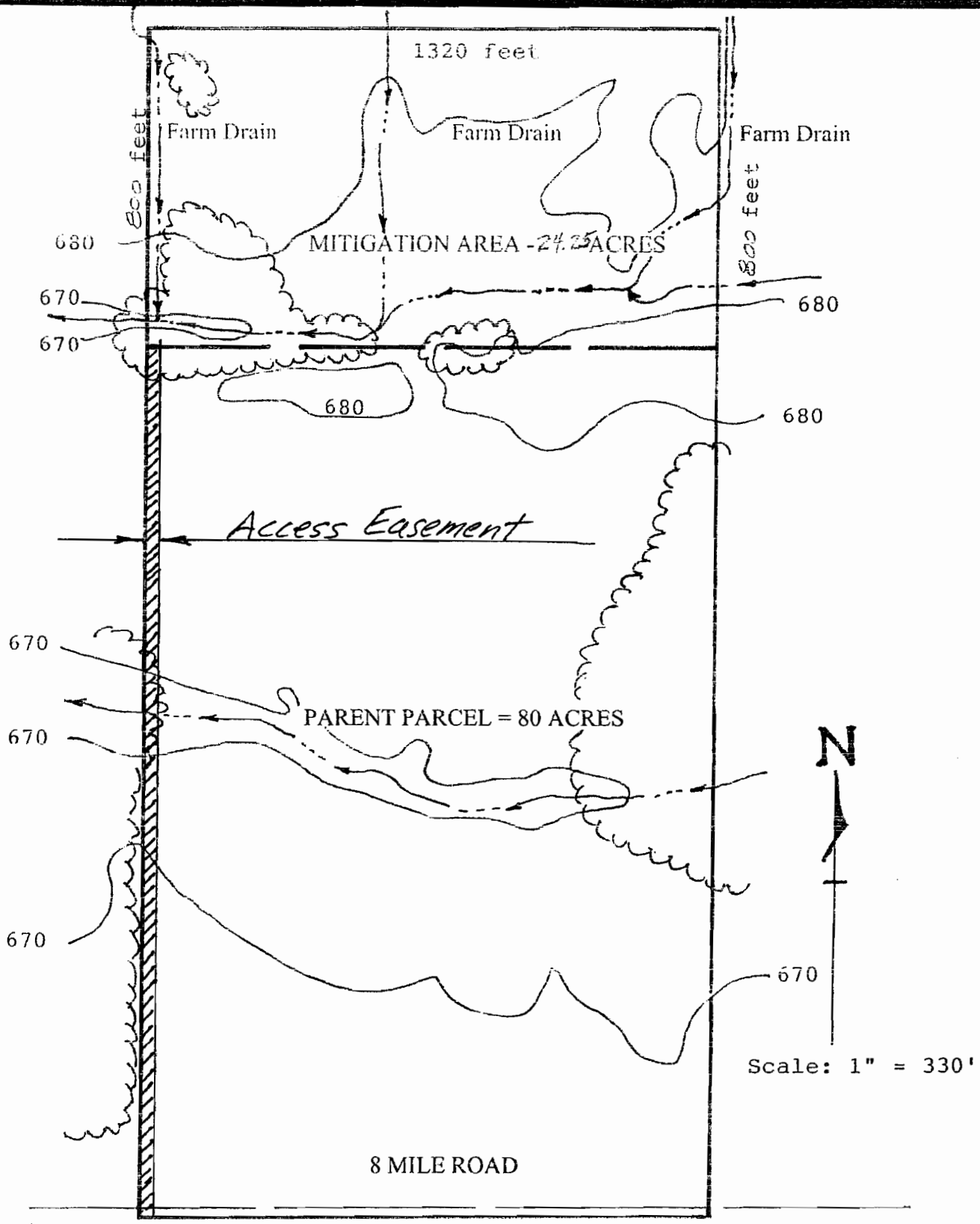
MARQUETTE AVE. WETLAND MITIGATION
EXISTING SITE AT 8 MILE ROAD, BRUCE TWP.

EXHIBIT D
TO THE
CONSERVATION EASEMENT

LEGAL DESCRIPTION OF THE PATH OF LEGAL ACCESS
TO THE EASEMENT PREMISES

A legal access path over a parcel of land located in the West ½ of the South West ¼ of Section 8, T46N, R1E, Bruce Township, Chippewa County, Michigan, more particularly described as:

The west 10 feet of the West ½ of the South West ¼ of Section 8, T46N, R1E, Bruce Township, Chippewa County, Michigan, for the sole purpose of accessing the Easement Premises in accordance with the “Agreement for Conservation Easement”.



MARQUETTE AVE. WETLAND MITIGATION
EXISTING SITE AT 8 MILE ROAD, BRUCE TWP.